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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,885	09/26/2003	Lance A. Ehrke	086485-9002-02	9539
7590	09/22/2005		EXAMINER	
Thomas A. Miller Michael Best & Friedrich LLP 100 East Wisconsin Avenue Milwaukee, WI 53202-4108			WONG, ALBERT KANG	
			ART UNIT	PAPER NUMBER
			2635	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,885

Applicant(s)

EHRKE ET AL.

Examiner

Albert K. Wong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/242,792.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-12-04</u> | 6) <input type="checkbox"/> Other: _____ |

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1. This Office action is in response to the application filed September 26, 2003. Claims 1-42 are pending. This application is a continuation of 10/319,856, now abandoned, which is a continuation of 09/242,792, now Patent 6,538,577. This application claims priority to PCT/US97/15728, filed September 5, 1997.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 10-11 of U.S. Patent No. 6,538,577. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the instant application are broader in scope than the claims of the Patent or the differences would have been obvious.

Regarding claim 1, this claim is essentially a broader version of claim 8 with the following differences: 1) a plurality of modules is claimed instead of at least one module; and 2) communication maybe made with both the WAN and the LAN. It would have been obvious to divide a module having both WAN and LAN communication capability into a separate WAN

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module and a LAN module to allow greater flexibility and easy upgradeability. Further, using both the WAN and the LAN to communicate would provide redundancy.

Regarding claim 2, it would have been obvious to use the controller to select the proper module for communications since some means must be present to enable communications. Using an existing controller would eliminate the need for an additional IC.

Regarding claim 3, implicit within the prior claim is hardware pertaining to a network. It would have been obvious to make the network a plug-in module to permit easy modification of the meter.

Regarding claims 4-5, these limitations are found in claims 10-11 of the Patent.

Regarding claims 6, it is conventional to include a level translator with a transducer to provide accurate readings from the transducer.

Regarding claims 7-8, it is conventional to use voltage and current transducers within a power meter to determine power consumption.

Regarding claim 9, it is conventional to include a display within an electrical meter to permit manual reading of the meter.

Regarding claims 10, it is conventional to use an antenna to transmit data from a meter when communication is done with a RF transmitter.

Regarding claims 11-13, it is conventional to use a spread spectrum transmitter for a remote meter transmitter. Spread spectrum communications reduces power consumption, lowers interference and allows a greater density of transmitters within a particular area.

Regarding claim 14, it would have been obvious to use a programmable controller to allow the user to alter the parameters of the meter and the protocol of the transmitter.

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Regarding claim 15, claim 8 recites an electric meter.

Regarding claim 16, this claim is a broader version of claim 1 which has been addressed above. Thus, the limitations are similarly claimed within the corresponding claim of the Patent.

Regarding claims 17-30, these limitations have been addressed above.

Regarding claim 31, this claim is the method equivalent of claim 1. It would have been obvious to use the apparatus previously claimed in its intended manner.

Regarding claim 32-42, these steps correspond to the use of the prior claimed apparatus in its intended manner and thus, would have been obvious.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Albert K. Wong whose telephone number is 571-272-3057. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on 571-272-3068. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Albert K. Wong

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September 19, 2005

A handwritten signature in black ink, appearing to read 'Albert K. Wong', with a stylized flourish at the end.

ALBERT K. WONG
PRIMARY EXAMINER